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12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15
16 **Scott Johnson,**
17 Plaintiff,
18 v.
19 **Lily Tam Wong;** and Does 1-10,
20 Defendants.

21 **Case No.**

22 **Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

23 Plaintiff Scott Johnson complains of Lily Tam Wong; and Does 1-10
24 (“Defendants”), and alleges as follows:

25 **PARTIES:**

26 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
27 level C-5 quadriplegic. He cannot walk and also has significant manual
dexterity impairments. He uses a wheelchair for mobility and has a specially
equipped van.

28 2. Defendant Lily Tam Wong owned the real property located at or about

1 1202 Sutter Street, San Francisco, California, in December 2018.

2 3. Defendant Lily Tam Wong owns the real property located at or about
3 1202 Sutter Street, San Francisco, California, currently.

4 4. Defendant Lily Tam Wong owned Sliders Diner located at or about
5 1202 Sutter Street, San Francisco, California, in December 2018.

6 5. Defendant Lily Tam Wong owns Sliders Diner (“Restaurant”) located at
7 or about 1202 Sutter Street, San Francisco, California, currently.

8 6. Plaintiff does not know the true names of Defendants, their business
9 capacities, their ownership connection to the property and business, or their
10 relative responsibilities in causing the access violations herein complained of,
11 and alleges a joint venture and common enterprise by all such Defendants.
12 Plaintiff is informed and believes that each of the Defendants herein,
13 including Does 1 through 10, inclusive, is responsible in some capacity for the
14 events herein alleged, or is a necessary party for obtaining appropriate relief.
15 Plaintiff will seek leave to amend when the true names, capacities,
16 connections, and responsibilities of the Defendants and Does 1 through 10,
17 inclusive, are ascertained.

18

19 **JURISDICTION & VENUE:**

20 7. The Court has subject matter jurisdiction over the action pursuant to 28
21 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
22 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

23 8. Pursuant to supplemental jurisdiction, an attendant and related cause
24 of action, arising from the same nucleus of operative facts and arising out of
25 the same transactions, is also brought under California’s Unruh Civil Rights
26 Act, which act expressly incorporates the Americans with Disabilities Act.

27 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
28 founded on the fact that the real property which is the subject of this action is

1 located in this district and that Plaintiff's cause of action arose in this district.
2

3 **FACTUAL ALLEGATIONS:**

4 10. Plaintiff went to Restaurant in December 2018 (twice) with the
5 intention to avail himself of its goods or services, motivated in part to
6 determine if the defendants comply with the disability access laws.

7 11. The Restaurant is a facility open to the public, a place of public
8 accommodation, and a business establishment.

9 12. Transaction counters are one of the facilities, privileges, and advantages
10 offered by Defendants to patrons of the Restaurant.

11 13. The transaction counter at the Restaurant was more than 36 inches in
12 height. In fact, the transaction counter was about 48 inches in height.

13 14. There was no lowered, 36 inch portion of the transaction counter at the
14 Restaurant for use by persons in wheelchairs to conduct transactions.

15 15. Currently, the transaction counter at the Restaurant is more than 36
16 inches in height.

17 16. Currently, there is no lowered, 36 inch portion of the transaction
18 counter at the Restaurant for use by persons in wheelchairs.

19 17. Restrooms are another one of the facilities, privileges, and advantages
20 offered by Defendants to patrons of the Restaurant.

21 18. The plaintiff, a quadriplegic, is forced to twist his wrist and grasp tight
22 on the key to open the restroom door. As a result, the restroom door (and
23 restroom in general) is inaccessible to plaintiff.

24 19. The restroom sink was mounted such that the counter or rim was more
25 than 34 inches above the finish floor. In fact, the restroom sink was about 36
26 inches high.

27 20. The restroom sink did not provide any knee clearance for wheelchair
28 users.

1 21. Instead of providing two grab bars on adjacent or parallel walls for use
2 by persons with disabilities who need to transfer to the toilet, there was only
3 one grab bar.

4 22. There was no clear floor space in front of the disposable toilet seat cover
5 dispenser because it was mounted on the wall behind the toilet.

6 23. Currently, the restroom sink is mounted such that the counter or rim is
7 more than 34 inches above the finish floor.

8 24. Currently, the restroom sink does not provide any knee clearance for
9 wheelchair users.

10 25. Currently, instead of providing two grab bars on adjacent or parallel
11 walls for use by persons with disabilities who need to transfer to the toilet,
12 there is only one grab bar.

13 26. Currently, there is no clear floor space in front of the disposable toilet
14 seat cover dispenser because it is mounted on the wall behind the toilet.

15 27. Entrance into the Restaurant is also one of the facilities, privileges, and
16 advantages offered by Defendants to patrons of the Restaurant.

17 28. The entrance door hardware at the Restaurant had a pull bar style
18 handle that required tight grasping to operate.

19 29. Currently, the entrance door hardware at the Restaurant has a pull bar
20 style handle that requires tight grasping to operate.

21 30. Defendants have failed to maintain in operable working condition those
22 features of facilities and equipment that are required to be readily accessible to
23 and usable by persons with disabilities at the Subject Property.

24 31. Plaintiff personally encountered these barriers.

25 32. This inaccessible facility denied the plaintiff full and equal access and
26 caused him difficulty.

27 33. The defendants have failed to maintain in working and useable
28 conditions those features required to provide ready access to persons with

1 disabilities.

2 34. The barriers identified above are easily removed without much
3 difficulty or expense. They are the types of barriers identified by the
4 Department of Justice as presumably readily achievable to remove and, in fact,
5 these barriers are readily achievable to remove. Moreover, there are numerous
6 alternative accommodations that could be made to provide a greater level of
7 access if complete removal were not achievable.

8 35. A common barrier removal project is modifying transaction counters to
9 make a portion of the counter accessible. This is a simple construction task,
10 well within the capabilities of any general contractor. The task can be
11 completed easily and for a modest price.

12 36. The barriers in this complaint are easily fixable. For example, replacing
13 door hardware with accessible hardware is a simple and inexpensive task that
14 can be completed without the need to hire a professional.

15 37. Plaintiff will return to Restaurant to avail himself of its goods or services
16 and to determine compliance with the disability access laws. He is currently
17 deterred from doing so because of his knowledge of the existing barriers. If the
18 barriers are not removed, the plaintiff will face unlawful and discriminatory
19 barriers again.

20 38. Given the obvious and blatant nature of the barriers and violations
21 alleged herein, the plaintiff alleges, on information and belief, that there are
22 other violations and barriers on the site that relate to his disability. Plaintiff will
23 amend the complaint, to provide proper notice regarding the scope of this
24 lawsuit, once he conducts a site inspection. However, please be on notice that
25 the plaintiff seeks to have all barriers related to his disability remedied. See
26 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
27 encounters one barrier at a site, he can sue to have all barriers that relate to his
28 disability removed regardless of whether he personally encountered them).

1
2 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
3 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
4 Defendants.) (42 U.S.C. section 12101, et seq.)

5 1. Plaintiff re-pleads and incorporates by reference, as if fully set forth
6 again herein, the allegations contained in all prior paragraphs of this
7 complaint.

8 39. Under the ADA, it is an act of discrimination to fail to ensure that
9 the privileges, advantages, accommodations, facilities, goods and
10 services of any place of public accommodation is offered on a full
11 and equal basis by anyone who owns, leases, or operates a place of
12 public accommodation. See 42 U.S.C. § 12182(a). Discrimination is
13 defined, *inter alia*, as follows:

- 14 a. A failure to make reasonable modifications in policies, practices,
15 or procedures, when such modifications are necessary to afford
16 goods, services, facilities, privileges, advantages, or
17 accommodations to individuals with disabilities, unless the
18 accommodation would work a fundamental alteration of those
19 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 20 b. A failure to remove architectural barriers where such removal is
21 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
22 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
23 Appendix "D."
- 24 c. A failure to make alterations in such a manner that, to the
25 maximum extent feasible, the altered portions of the facility are
26 readily accessible to and usable by individuals with disabilities,
27 including individuals who use wheelchairs or to ensure that, to the
28 maximum extent feasible, the path of travel to the altered area and

1 the bathrooms, telephones, and drinking fountains serving the
2 altered area, are readily accessible to and usable by individuals
3 with disabilities. 42 U.S.C. § 12183(a)(2).

4 40. Under the 2010 Standards, where the approach to the sales or service
5 counter is a parallel approach, such as in this case, there must be a portion of
6 the sales counter that is no higher than 36 inches above the floor and 36 inches
7 in width and must extend the same depth as the rest of the sales or service
8 counter top. 2010 Standards § 904.4 & 904.4.1.

9 41. Here, no such accessible transaction counter has been provided in
10 violation of the ADA.

11 42. Restroom door hardware must have handles and other operating
12 devices that have a shape that is easy to use with one hand and does not require
13 tight grasping, tight pinching, or twisting of the wrist to operate. 2010
14 Standards § 404.2.7; 309.4.

15 43. Here, the failure to provide accessible restroom door hardware is a
16 violation of the law.

17 44. Sinks must be mounted so that the counter or rim is no higher than 34
18 inches above the finish floor. 2010 Standards § 606.3.

19 45. Here, the restroom sink was mounted higher than the maximum
20 permitted and is a violation of the ADA.

21 46. Sinks must provide knee clearance of at least 9 inches to 27 inches in
22 height. There must also be at least 11 inches of depth. And at least 30 inches
23 in width. 2010 Standards § 306.

24 47. Here, no such knee clearance was provided and this is a violation of the
25 ADA.

26 48. For a toilet to be considered accessible under the ADA, there must be
27 two grab bars on walls adjacent to the toilet to assist persons with disabilities
28 to transfer to the toilet. 2010 Standards § 604.5.

1 49. Here, the failure to provide compliant grab bars is a violation.

2 50. Clear floor space that allows a forward or a parallel approach by a person
3 using a wheelchair shall be provided at controls, dispensers, receptacles, and
4 other operable equipment. 2010 Standards § 309.2.

5 51. Here, the failure to provide such floor space is a violation of the law.

6 52. Door hardware must have a shape that is easy to grasp with one hand
7 and does not require tight grasping, tight pinching, or twisting of the wrist to
8 operate. 2010 Standards § 404.2.7.

9 53. Here, the failure to provide such door hardware is a violation of the ADA.

10 54. The Safe Harbor provisions of the 2010 Standards are not applicable
11 here because the conditions challenged in this lawsuit do not comply with the
12 1991 Standards.

13 55. A public accommodation must maintain in operable working condition
14 those features of its facilities and equipment that are required to be readily
15 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

16 56. Here, the failure to ensure that the accessible facilities were available
17 and ready to be used by the plaintiff is a violation of the law.

18

19 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
20 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
21 Code § 51-53.)**

22 57. Plaintiff repleads and incorporates by reference, as if fully set forth
23 again herein, the allegations contained in all prior paragraphs of this
24 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
25 that persons with disabilities are entitled to full and equal accommodations,
26 advantages, facilities, privileges, or services in all business establishment of
27 every kind whatsoever within the jurisdiction of the State of California. Cal.
28 Civ. Code § 51(b).

1 58. The Unruh Act provides that a violation of the ADA is a violation of the
2 Unruh Act. Cal. Civ. Code, § 51(f).

3 59. Defendants' acts and omissions, as herein alleged, have violated the
4 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
5 rights to full and equal use of the accommodations, advantages, facilities,
6 privileges, or services offered.

7 60. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
8 discomfort or embarrassment for the plaintiff, the defendants are also each
9 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
10 (c).)

11 61. Although the plaintiff was markedly frustrated by facing discriminatory
12 barriers, even manifesting itself with minor and fleeting physical symptoms,
13 the plaintiff does not value this very modest physical personal injury greater
14 than the amount of the statutory damages.

15

16 **PRAYER:**

17 Wherefore, Plaintiff prays that this Court award damages and provide
18 relief as follows:

19 1. For injunctive relief, compelling Defendants to comply with the
20 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
21 plaintiff is not invoking section 55 of the California Civil Code and is not
22 seeking injunctive relief under the Disabled Persons Act at all.

23 2. Damages under the Unruh Civil Rights Act, which provides for actual
24 damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: January 23, 2019

CENTER FOR DISABILITY ACCESS

By:

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C. H.

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Attorney for plaintiff